



FILED

Mar 17 2008, 9:26 am

Kevin L. Smith

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of the supreme court,
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tax court

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RUBERTHA J. JOHNSON, KERN
B. PEAK, JR., JUDY STREETER,
JERRY L. COTNER, and DEBBY
FURNEY, On Behalf of Themselves and
All Others Similarly Situated,

VS.

Appellee-Defendant.

[illegible]

No. 48A02-0707-CV-561

The Honorable Jack L. Brinkman, Judge
Cause No. 48D02-0412-PL-1212

ROBB, Judge

Case Summary and Issue

Rubertha Johnson and 317 other former employees of Guide Corporation (collectively, the “Employees”) appeal the trial court’s grant of Guide’s motion for summary judgment and denial of their motion for summary judgment. On appeal, the Employees raise four issues, one of which we find dispositive and restate as whether the trial court properly concluded the Labor Management Relations Act (the “LMRA”) preempted the Employees’ claims for liquidated damages and attorney fees under the Indiana Wage Payment Statute. Concluding the trial court properly applied the LMRA to preempt the Employees’ claims, we affirm and remand.

Facts and Procedural History

The Employees are former members of the United Automobile, Aerospace and Agricultural Implement Workers of America, Local 663, who retired from Guide on October 1, 2003. A collective bargaining agreement (the “CBA”) negotiated between the Local (on behalf of the Employees) and Guide governed the terms and conditions of the Employees’ employment with Guide. The CBA provided that an eligible employee was entitled to an annual amount of hourly vacation, which was calculated based on an employee’s years of service and the number of pay periods the employee worked during the year in question. For example, an eligible employee with five years of service who worked all twenty-six pay periods for the year in question would receive 120 hours of vacation. The CBA also provided that each employee was entitled to payment for unused vacation time and that “[p]ayment of the unused portion . . . shall be made as soon as possible but not later than February 1 of the following year.” Appellants’ Appendix at 139.

The Employees were paid every Thursday for time worked during the previous period of Monday through Sunday. Thus, when the Employees retired on Wednesday, October 1, 2003, they received their final paychecks on Thursday, October 9, 2003, for the pay period of Monday, September 29, 2003, to Sunday, October 5, 2003. The October 9th paychecks, however, did not include payment for unused vacation. Guide made those payments on the following pay date, October 16, 2003, and considered the timing of such payments to be consistent with the CBA provision that unused vacation “shall be made as soon as possible but not later than February 1 of the following year.” Id.

In December 2004, the Employees filed a complaint alleging that the October 16th payments violated the wage payment statute, specifically its requirement that an employee who voluntarily leaves employment is entitled to payment for all wages due no later than “the next usual and regular day for payment of wages.” Ind. Code § 22-2-5-1(b). The Employees claimed this day was October 9, 2003. On June 20, 2005, the trial court certified the class of “[a]ll former employees of Guide Corporation that retired effective October 1, 2003 and were paid vacation hours after October 13, 2003.” Id. at 241. On February 8, 2006, the Employees filed a motion for summary judgment. On March 10, 2006, Guide filed a motion for summary judgment. On March 5, 2007, the trial court conducted a hearing on the motions. On April 4, 2007, the trial court entered findings of fact and conclusions of law, concluding that the LMRA preempted the Employees’ claims and, even if the claims were not preempted, Guide’s October 16th payments did not violate the wage payment statute. Based on these conclusions, the trial court granted Guide’s motion and denied the

Employees'. On May 4, 2007, the Employees filed a motion to correct error, which the trial court denied on June 1, 2007. The Employees now appeal.

Discussion and Decision

I. Standard of Review

Summary judgment is appropriate only if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C). We apply the same standard of review as the trial court did in reviewing the grant or denial of a motion for summary judgment. Black v. Employee Solutions, Inc., 725 N.E.2d 138, 141 (Ind. Ct. App. 2000). That is, we consider the facts in the light most favorable to the party opposing summary judgment and do not reweigh evidence. Reed v. Luzny, 627 N.E.2d 1362, 1363 (Ind. Ct. App. 1994), trans. denied. The party appealing the trial court's grant or denial of summary judgment has the burden of persuading this court that the trial court's decision was erroneous. Black, 725 N.E.2d at 141. "The fact that the parties make cross-motions for summary judgment does not alter our standard of review. Instead, we must consider each motion separately to determine whether the moving party is entitled to judgment as a matter of law." Ind. Farmers Mut. Ins. Group v. Blaskie, 727 N.E.2d 13, 15 (Ind. Ct. App. 2000).

II. Propriety of Trial Court's Decision

Section 301 of the LMRA states that "[s]uits for violation of contracts between an employer and a labor organization representing employees . . . may be brought in any district

court of the United States having jurisdiction of the parties” 29 U.S.C. § 185(a). The Supreme Court has interpreted section 301 as having complete preemptive force, which means that it will “displace entirely any state cause of action ‘for violation of contracts between an employer and a labor organization.’ Any such suit is purely a creature of federal law, notwithstanding the fact that state law would provide a cause of action in the absence of [section] 301.” Franchise Tax Bd. v. Constr. Laborers Vacation Trust for S. Cal., 463 U.S. 1, 23 (1983) (quoting id.). The rationale for this rule is that it promotes uniform interpretation of collective bargaining agreements and promotes efficient and expedient resolution of labor disputes through arbitration. See Teamsters v. Lucas Flour Co., 369 U.S. 95, 104-05 (1962).

Although it has been clear since Lucas Flour that section 301 preempts a state law claim for violation of a collective bargaining agreement, the Supreme Court has recognized that section 301 preemption also applies where the state law claim, though not alleging violation of a collective bargaining agreement, nevertheless requires interpretation of one. See, e.g., Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 211 (1985) (“If the policies that animate [section] 301 are to be given their proper range, however, the pre-emptive effect of [section] 301 must extend beyond suits alleging contract violations.”). The scope of this type of preemption has never been stated precisely. Cf. In re Bentz Metal Prods. Co., Inc., 253 F.3d 283, 286 (7th Cir. 2001) (en banc) (observing that the scope of section 301 preemption “not based directly on a CBA . . . continues to cause some bewilderment”). Nevertheless, as a general proposition, section 301 preempts a state law claim if the claim is “founded directly on rights created by” a collective bargaining agreement, Caterpillar, Inc. v. Williams, 482 U.S. 386, 394 (1987), or is “substantially dependent on analysis of” one, id. (quoting Elec.

Workers v. Hechler, 481 U.S. 851, 859 n.3 (1987)); cf. Lueck, 471 U.S. at 213 (stating that preemption applies if the claim is “inextricably intertwined” with interpretation of a collective bargaining agreement).

In applying the latter part of this test – whether a state law claim is substantially dependent on analysis of a collective bargaining agreement – the Supreme Court has recognized that although section 301 preemption promotes important federal interests such as interpreting labor contracts uniformly and resolving labor disputes through bargained-for grievance and arbitration procedures, section 301 was enacted “against a backdrop of generally applicable labor standards.” Livadas v. Bradshaw, 512 U.S. 107, 124 n.17 (1994). As such, the Supreme Court has cautioned that section 301 “cannot be read broadly to preempt nonnegotiable rights conferred on individual employees as a matter of state law.” Id. at 124; see also id. (“[W]hen the meaning of contract terms is not the subject of dispute, the bare fact that a collective-bargaining agreement will be consulted in the course of state-law litigation plainly does not require the claim to be extinguished.”); Lingle v. Norge Div. of Magic Chef, Inc., 486 U.S. 399, 409 (1988) (noting that section 301 preemption “merely ensures that federal law will be the basis for interpreting collective-bargaining agreements, and says nothing about the substantive rights a State may provide to workers when adjudication of those rights does not depend upon the interpretation of such agreements”); Lueck, 471 U.S. at 213 (“[N]ot every dispute concerning employment, or tangentially

involving a provision of a collective-bargaining agreement, is pre-empted by [section] 301 or other provisions of the federal labor law.”).¹

We note initially that Guide does not appear to argue, nor do we conclude, that the Employees’ claims are preempted because they are founded on rights created by the CBA. The Employees seek liquidated damages and attorney fees based on Guide’s failure to compensate them for unused vacation time within the time period prescribed by the wage payment statute. Although the right to receive payment for unused vacation time is created by the CBA, the right to receive liquidated damages and attorney fees for the belated payment of unused vacation time is a function of the wage payment statute, not the CBA. See Ind. Code §§ 22-2-5-1(b) (stating that when an employee voluntarily leaves employment, the employer is required to pay the employee the amount due no later than “the next usual and regular day for payment of wages”) and 22-2-5-2 (stating that an employer’s failure to comply with Indiana Code section 22-2-5-1 permits an employee to recover liquidated damages and reasonable attorney fees related to such recovery). Thus, the Employees’ claims are not founded on rights created by the CBA. Cf. Mattis v. Massman, 355 F.3d 902, 907 (6th Cir. 2004) (concluding the employee’s claims were founded on rights created by a

¹ The foregoing discussion of the preemptive scope of section 301 is not meant to imply that if preemption applies, state courts lack jurisdiction to hear a section 301 claim. To the contrary, state courts enjoy concurrent jurisdiction with federal courts over cases arising under section 301, Charles Dowd Box Co. v. Courtney, 369 U.S. 502, 506 (1962), but must apply federal law in deciding such cases, Lucas Flour, 369 U.S. at 102. As a practical matter, however, because federal labor law expresses a strong policy in favor of exhausting grievance and arbitration procedures before bringing suit in state or federal court, Republic Steel Corp. v. Maddox, 379 U.S. 650, 652 (1965), and because the vast majority of collective bargaining agreements include such procedures as a means to resolve labor disputes, see Lingle, 486 U.S. at 411 n.11 (citing a study finding that 99 percent of the union contracts sampled contained an arbitration clause), courts exercising jurisdiction over section 301 claims often will dispose of them on the grounds of failure to exhaust grievance and arbitration procedures to the extent such procedures apply, see, e.g., Mitchell v. Pepsi-Cola Bottlers, Inc., 772 F.2d 342, 347 (7th Cir. 1985), cert. denied 475 U.S. 1047 (1986); Roberts v. Howard

collective bargaining agreement and therefore preempted because the employee “has not established the existence of any external regime of state law that would allow him to allege violations of rights independent from the rights created by the CBA” and because the employee’s allegations of denial of vacation days, failure to provide proper training, and failure to excuse illness absences were “entitlements [that] belonged to [the employee] solely because of the CBA”).

Notwithstanding that the Employees’ claims are not founded on rights created by the CBA, section 301 preemption still applies if the claims are substantially dependent on analysis of the CBA. We agree with the Seventh Circuit’s observation that the principles the Supreme Court has laid down regarding the preemptive scope of section 301 in this context “are sometimes easier to mouth than to apply,” In re Bentz Metal Prods., 253 F.3d at 287, and add our own observation that determining whether a claim is substantially dependent on analysis of a collective bargaining agreement has resulted in fine distinctions among courts that have addressed the issue. The Seventh Circuit’s decision in Atchley v. Heritage Cable Assocs., 101 F.3d 495, 500 (7th Cir. 1996), and the Ninth Circuit’s decision in Balcorta v. Twentieth Century-Fox Film Corp., 208 F.3d 1102 (9th Cir. 2000), illustrate the latter observation.

The Atchley court concluded that a group of union employees’ claims for liquidated damages under the Indiana Wage Payment Statute (the same statute at issue in this case) were substantially dependent on analysis of the parties’ collective bargaining agreement and therefore preempted. The parties in Atchley negotiated a collective bargaining agreement

Univ., 740 A.2d 16, 20 (D.C. 1999).

under which the employer agreed to pay each employee an hourly wage increase and a bonus. The agreement stated that the wage increases would become “effective the first payroll period following ratification,” and the employer also orally agreed to pay the bonus “to each employee who was a member of the bargaining unit on the date of ratification.” 101 F.3d at 497. The employees ratified the agreement in December 1994, but the employer and the local did not sign until January and February 1995, respectively. Although the employer paid the bonuses and the wage increases in February and January 1995, respectively, the latter of which included retroactive payments from the date the employees ratified the agreement, the employer refused to pay liquidated damages the employees claimed were owed to them under the wage payment statute.

The court noted that because the wage payment statute regulates the timing of the payment of wages, resolving the employees’ claims involved a threshold determination of “the date on which [the employer] was required to pay the wage increases and bonuses.” Id. at 500. The court reasoned that it could not determine this “trigger date” by mere reference to the collective bargaining agreement, presumably because it did not explicitly state the date on which the payments would begin:

[e]ven though the date of payment may not be set forth explicitly in [the collective bargaining agreement], . . . it is a question of federal contract interpretation whether there was an obligation under the CBA to provide the payments at a certain time and, if so, whether the employer breached that implied contract provision.

Id.; see also id. (“In our case, the date from which penalties would run – i.e., the date 10 days after the date on which the increases and bonuses should have been paid – is unclear without interpretation of the explicit and implied terms of the CBA to determine when the parties

agreed that such payment was to be made.”). Accordingly, the court concluded the employees’ claims were substantially dependent on analysis of the parties’ collective bargaining agreement and therefore preempted, but cautioned that its analysis was fact sensitive and “does not mean that whenever a collective bargaining agreement exists interpretation of that agreement always will be required in connection with the Indiana wage payment statute and that the statute always will be preempted by [section] 301.” Id. at 502.

Balcorta involved an employee’s claim for liquidated damages under a California wage payment statute that required the payment of wages earned within “24 hours after discharge.” 208 F.3d at 1109 (quoting Cal. Lab. Code § 201.5 (1997)). The employee in Balcorta worked as an electrical rigger in the film industry and often was required to work intermittently for periods of several days. Although the employer paid the employee for each period he worked, on several occasions it failed to pay him within the time period prescribed by the wage payment statute. Based on these untimely payments, the employee claimed he was entitled to statutory liquidated damages, but the employer disagreed, arguing that section 301 preempted the employee’s claim.

The court initially rejected the employer’s argument that the Seventh Circuit’s decision in Atchley compelled a conclusion that section 301 preemption applied. Instead, the court distinguished Atchley, characterizing the wage payment statute in that case as one that predicated payments “within 10 days of when they were due.” Id. at 1109 n.11 (quotation marks omitted). Thus, because the wage payment statute in Atchley required payment within ten days from the date payment was due, and because there was uncertainty in the agreement about when the payments were effective, the court reasoned that “the [Atchley] court was

required to interpret the collective bargaining agreement in order to determine when the wages were due . . .” Id. at 1109 n.11 (emphasis in original).”

Having distinguished Atchley, the court then rejected the employer’s argument that determining whether the employee was discharged on each occasion required interpretation of the parties’ collective bargaining agreement, noting that whether the employee was discharged could be determined as a factual matter without reference to the parties’ collective bargaining agreement. To the extent reference to the agreement was required, the court reasoned that such reference merely involved “read[ing] and apply[ing] [the agreement’s] provisions to determine whether [the] employee was discharged . . ., but no interpretation of the provisions would be necessary.” Id. at 1109-10. Accordingly, the court concluded the employee’s claim was not substantially dependent on analysis of the parties’ collective bargaining agreement and therefore not preempted.

Here, the CBA states that an employee who has unused vacation time as of December 31st of the year in question “shall receive a payment in lieu of vacation time off for the unused portion” and that such payment “shall be made as soon as possible but not later than February 1 of the following year.” Appellants’ App. at 139. The parties dispute whether these provisions apply to retirees and whether Guide’s position that they do apply is “tenable” or “untenable.” Appellants’ Brief at 19-20; Appellee’s Brief at 17. Putting these questions to the side, the dispositive issue for purposes of whether section 301 preemption applies is whether the Employees’ claims are substantially dependent on analysis of the CBA. In this respect, the following statement, made in passing by Guide, succinctly explains why section 301 preempts the Employees’ claims: “[i]n order for the Court to resolve

whether Guide violated the Indiana Wage Payment Statute, the Court must interpret . . . the collective bargaining agreement to determine when Guide owed [the Employees] the payment for the unused vacation entitlement.” Appellee’s Br. at 15 (emphasis in original).

For an employee to receive liquidated damages under the wage payment statute, the employee must first establish that there is “an amount due.” Ind. Code § 22-2-5-1(b). The CBA does not state when unused vacation time becomes due, it merely states that an employee with unused vacation time is entitled to receive payment for it. Although we recognize that a plausible answer to when unused vacation time becomes due is the date of retirement, supplying such an answer itself requires that we interpret a term not explicitly stated in the CBA. In this respect, we note the Atchley court could have made a similar determination; the collective bargaining agreement in that case stated the employees would receive the wage increases “effective the first payroll period following ratification.” 101 F.3d at 497. Because the employees ratified the agreement in December 1994, the court could have plausibly determined that the ratification date was the date the wage increases were due for purposes of determining liquidated damages under the wage payment statute. The court noted, however, that even this modest determination would have required interpretation of the parties’ collective bargaining agreement: “[q]uite simply, the timing of payment of the wage increases and bonuses is a function of the CBA, and whether the members of Local 1393 were paid properly under the CBA requires interpretation of the CBA itself.” Id. at 500.

The Employees’ claims also are distinguishable from the employee’s claim in Balcorta. Although the Balcorta court did not explicitly state so, implicit in its holding, and

its distinguishing of Atchley, was that it could determine as a factual matter that the employee's wages were due on the dates he was discharged. Because the court also could determine the employee's discharge dates as factual matters, any reference to the parties' collective bargaining agreement required mere application of its provisions, not interpretation. Cf. Livadas, 512 U.S. at 125 (concluding employee's claim for damages under a separate provision of a California wage payment statute that stated "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately," id. at 111 n.3 (quoting Cal. Lab. Code § 201), was not substantially dependent on analysis of the parties' collective bargaining agreement and therefore not preempted).

Absent a more explicit statement in the CBA stating when unused vacation is considered due, we are not convinced the Employees' claims require mere reference to the CBA. Instead, we conclude the Employees' claims are substantially dependent on analysis of the CBA and, consistent with Atchley, are preempted under section 301.²

Conclusion

² We also note that our conclusion promotes the interest expressed consistently in the Supreme Court's section 301 jurisprudence that labor disputes are best resolved through grievance and arbitration procedures. See Lueck, 471 U.S. at 219-20; Lucas Flour, 369 U.S. at 105. To that end, as a matter of litigation strategy, nothing prevented the Employees from initially obtaining an arbitral decision that recognized the Employees' right to receive payment for unused vacation and, most importantly, specified the date upon which such payment was considered due under the CBA. Assuming these determinations were favorable to the Employees, they then could have pursued damages available under the wage payment statute in court. Cf. Albradco, Inc. v. Bevona, 982 F.2d 82, 87 (2d Cir. 1992) (concluding a union's claims on behalf of its members for liquidated damages under a New York wage payment statute against shareholder and president of bankrupt employer were not preempted because "the state court in this action must follow the determination already made by the arbitrators and will not be required to interpret the CBAs"); Stump v. Cyprus Kanawha Corp., 919 F. Supp. 221, 225 (S.D. W.Va. 1995) (concluding employees' claims for liquidated damages under a West Virginia wage payment statute were not preempted and interpreting Albradco as standing for the proposition "that one can enforce an arbitration decision based upon a state's wage payment and collection act and receive liquidated damages pursuant to the state act regardless of a

The trial court properly concluded that section 301 of the LMRA preempts the Employees' claims for liquidated damages and attorney fees under the Indiana Wage Payment Statute. Accordingly, we affirm and remand for further proceedings consistent with this opinion. On remand, the trial court should determine whether the CBA's grievance and arbitration procedures apply to the Employees' claims pursuant to federal labor law and, if so, whether the Employees failed to exhaust those procedural remedies. See, supra, note 1.

Affirmed and remanded.

FRIEDLANDER, J., and MATHIAS, J., concur.

collective bargaining agreement”).